

No. 830

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

MOK CHUNG,

Appellant,

vs.

THE UNITED STATES,

Appellee.

TRANSCRIPT OF RECORD.

Upon Appeal from the United States District Court
for the Northern District of California.

FILED

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Citation.

UNITED STATES OF AMERICA—ss.

The President of the United States, to Marshall B. Woodworth, United States Attorney for the Northern District of California, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing^a an appeal, of record in the clerk's office of the District Court of the United States, for the Northern District of California, wherein Mok Chung is appellant, and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable JOHN J. DE HAVEN, United States District Judge for the Northern District of California, this 10th day of April, A. D. 1902.

JOHN J. DE HAVEN,
United States District Judge.

Service of the within citation and receipt of a copy thereof is hereby admitted this 10th day of April, A. D. 1902. San Francisco, Cala.

MARSHALL B. WOODWORTH,
United States Attorney, Northern District of California.

[Endorsed]: No. 12,528. United States Circuit Court of Appeals, for the Ninth Circuit. Mok Chung (on Habeas Corpus), Appellant, vs. The United States, Appellee. Citation. Filed April 10th, 1902. Geo. E. Morse, Clerk United States District Court.

In the District Court of the United States, Northern District of California.

In the Matter of MOK CHUNG on }
 Habeas Corpus. } [Petitioner's Picture]

Petition for Writ of Habeas Corpus and Order Allowing Same.
 To the Honorable J. J. DE HAVEN, the Judge of the
 Above-Entitled Court:

The petition of Mok Jim respectfully shows:

That Mok Chung a passenger on the S. S. "San Jose," is unlawfully imprisoned, detained, confined and restrained of his liberty by the agent of the Pacific Mail S. S. Co., in the city and county of San Francisco, State of California.

That the said imprisonment, detention, confinement, and restrain are illegal, and the illegality thereof consists in this, to wit:

That it is claimed by the said agent that the said passenger is a subject of the Emperor of China, and must not and cannot be allowed to land under the provisions of the act of Congress of May 6, 1882, entitled "An act to execute certain Treaty Stipulations relating to Chinese," and the acts amendatory thereof and supplemental thereto,

That the said passenger does not come within the restrictions of said act or acts, but on the contrary your petitioner alleges that the said passenger was born in the city and county of San Francisco, State of California.

That the said passenger has applied to the Collector of the Port at San Francisco, for permission to land. That the said application for landing has been refused.

That your petitioner makes this petition in behalf of the said passenger.

Wherefore your petitioner prays that a writ of habeas corpus be granted, directed to said agent, commanding him to have the body of the said _____ before your Honor at a time and place to be specified therein, to do and receive what shall then and there be considered by your Honor concerning him together with the time and cause of his detention and said writ, and that he may be restored to his liberty.

Dated San Francisco, December 30th, 1901.

(Signature in Chinese.) MOK JIM,
Petitioner.

GEO. A. McGOWAN,
Attorney for Petitioner, No. 508 Montgomery St., San
Francisco.

State of California,
City and County of San Francisco,
Northern District of California,
United States of America. } ss.

Mok Jim, being first duly sworn upon oath, deposes and says: That he is the petitioner above named, and that he has heard read the foregoing petition and knows

the contents thereof; and that the same is true of his own knowledge.

(Signature in Chinese.)

MOK JIM.

Subscribed and sworn to before me this 30th day of December, A. D. 1901.

JOHN FOUGA,

Deputy Clerk United States District Court, Northern District of California.

Let the writ of habeas corpus issue pursuant to the prayer of the petition, returnable December 31st, 1901. And ordered that the case be referred to the Honorable E. H. HEACOCK, to take proofs and report findings and judgment; and ordered that the detained when produced be remanded to the custody of the United States Marshal of this District, till further order of Court.

JOHN J. DE HAVEN,

Judge.

Dated December 30th, 1901.

[Endorsed]: Filed December 30, 1901. Geo. E. Morse, Clerk. By John Fougá, Deputy Clerk.

In the District Court of the United States, Northern District of California.

In the Matter of MOK CHUNG on }
Habeas Corpus. } No. 12,528.

Writ of Habeas Corpus.

The President of the United States of America, to the Master of the Steamship "San Jose," or General

Agent of Pacific Mail Steamship Company, or whoever may have the custody or control of said Mok Chung, Greeting:

You are hereby commanded, that you have the body of the above-named person, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name the said person shall be called or charged, before the Honorable JOHN J. DE HAVEN, Judge of the District Court of the United States for the Northern District of California, at the courtroom of said court in the city and county of San Francisco, California, on the 31st day of December, 1901, at — o'clock A. M., to do and receive what shall then and there be considered in the premises. And have you then and there this writ.

Witness, the Honorable JOHN J. DE HAVEN, Judge of the said District Court, and the seal thereof, at San Francisco, in said District, on the 30th day of December, A. D. 1901.

[Seal]

GEO. E. MORSE,
Clerk of said District Court.

In obedience to the within writ, I hereby produce the body of the within named defendant as within directed, and return that I hold the said person in my custody, by direction of the Customs authorities of the Port of San Francisco, California, under the provisions of the Chinese Restriction Act.

San Francisco, December 31st, 1901.

A. G. D. KERRELL,
Passn. Agt. Steamship Pacific Mail S. S. Co.

[Endorsed]: Issued December 30th, 1901. Returnable December 31st, 1901. Filed on return this December 31st, 1901. George E. Morse, Clerk of said United States District Court. By J. S. Manley, Deputy Clerk.

In the District Court of the United States, Northern District of California.

In the Matter of MOK CHUNG on }
Habeas Corpus. } No. 12,528.

Marshal's Return of Service of Writ of Habeas Corpus.

The President of the United States of America, to the Master of the Steamship "San Jose," or General Agent of Pacific Mail Steamship Company, or whoever may have the custody or control of said Mok Chung, Greeting:

You are hereby commanded, that you have the body of the above-named person, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name the said person shall be called or charged, before the Honorable JOHN J. DE HAVEN, Judge of the District Court of the United States for the Northern District of California, at the courtroom of said court in the city and county of San Francisco, California, on the 31st day of December, 1901, at — o'clock A. M., to do and receive what shall then and there be considered in the premises. And have you then and there this writ.

Witness, the Honorable JOHN J. DE HAVEN, Judge of the said District Court, and the seal thereof, at San

Francisco, in said District, on the 30th day of December, A. D. 1901.

[Seal]

GEORGE E. MORSE,
Clerk of said District Court.

By _____,
Deputy Clerk.

I, George E. Morse, clerk of the District Court of the United States for the Northern District of California, do hereby certify the foregoing to be a copy of the writ of habeas corpus, issued in the within entitled matter.

Attest my hand, and seal of said District Court this 30th of December, A. D. 1901.

[Seal]

GEO. E. MORSE,
Clerk.

I hereby certify, that on the 30th day of December, 190—, I received the writ of which the within is a copy, and that on the 31st day of December, 1901, at San Francisco, in this District. I personally served the said writ, by delivering to and leaving the same with General Agent for Pacific Mail Steamship Co.

Dated, San Francisco, Cal., December 31, 1901.

JOHN H. SHINE,
United States Marshal.

By R. De Lance,
Office Deputy Marshal.

[Endorsed]: Issued December 30th, 1901. Returnable December 31st, 1901. Filed on return, this day of December 31st, 1901. Geo. E. Morse, Clerk of said United States District Court. By John Fouga, Deputy Clerk.

*In the District Court of the United States, in and for the
Northern District of California.*

In the Matter of MOK CHUNG on }
Habeas Corpus. } No. 12,528.

Intervention by United States.

Now comes the United States attorney for the Northern District of California, and by leave of Court first had and obtained, intervenes on behalf of the United States in the above-entitled matter and for ground of intervention alleges:

1. That the said Chinese person above-named is a laborer by occupation and has not previous to the filing of the application for a writ of habeas corpus been in the United States.
2. That the said Chinese person has failed to produce the certificate required by the Exclusion and Registration Acts, and is not a member of the privileged class mentioned in said acts, who are allowed to come, to be and to remain in the United States.
3. That the said person is lawfully detained by the master of the steamship "San Jose" mentioned in said petition.

Wherefore, the said United States attorney prays that a judgment of remand be made by this Honorable Court, directing that the said Chinese person above-named, be returned to the custody from which he was taken, and

the country from whence he came, and for such other and further order as may be proper.

MARSHALL B. WOODWORTH,
United States Attorney.

[Endorsed]: Filed December 31st, 1901. Geo. E. Morse, Clerk.

In the District Court of the United States, in and for the Northern District of California.

In the Matter of MOK CHUNG on }
Habeas Corpus. } No. 12,528.

Warrant of Commitment.

The President of the United States of America, to the Marshal of the United States for the Northern District of California, and to his Deputies, or any or Either of Them, Greeting:

The above-named party having been produced in obedience to the writ herein, and the Judge of said court having ordered that said party be committed to the custody of the United States marshal for this district until the further order of the Court:

Now, therefore, you are hereby commanded to receive into your custody and safely keep the said above-named party until the further order of the Court herein.

Witness, the Honorable JOHN J. DE HAVEN, Judge of the said District Court, and the seal thereof, at San Francisco, in said District, on the December 31, 1901.

[Seal]

GEORGE E. MORSE,
Clerk of the said District Court.

By J. S. Manley,
Deputy Clerk.

United States Marshal's Office. }
Northern District of California. }

The within warrant of commitment was received by me on the 31st day of December, A. D. 1901, and is returned executed this 31st day of December, A. D. 1901.

San Francisco, California, December 31st, 1901.

JOHN H. SHINE,
United States Marshal.

By R. De Lance,
Office Deputy Marshal.

[Endorsed]: Issued December 31st, 1901. Returned and filed this December 31st, 1901. Geo. E. Morse, Clerk. By J. S. Manley, Deputy Clerk.

*In the District Court of the United States, in and for the
Northern District of California.*

Honorable E. H. HEACOCK, Special Referee.

In the Matter of MOK CHUNG on }
Habeas Corpus. } No. 12,528.

Testimony.

Thursday, January 16, 1902.

Appearances:

GEORGE A. McGOWAN, Esq., for the Petitioner.

BENJAMIN L. MCKINLEY, Esq., for the United States.

(D. D. Jones was sworn to act as interpreter in the case.)

MOK YEE FOON, called for the petitioner, sworn.

(Mr. McGOWAN.)

Q. Where do you reside? A. Palo Alto.

Q. What is your business there?

A. I am a nurseyman.

Q. For yourself, or are you working for somebody else? A. There are numbers of us in shares.

Q. What is the name of your nursery?

A. Quong Lee.

Q. Do you know the petitioner in this case, Mok Chung? A. Yes, sir.

Q. Where was he born? A. On Dupont street.

Q. In San Francisco? A. Yes, sir.

Q. What number on Dupont street?

A. 900, Dupont street.

Q. When was he born?

A. The 7th year of Quong Sue.

Q. What month and day?

A. The 10th month, 15th day (5th day of December, 1881).

Q. What is his father's name?

A. Mok Chuey Chu.

Q. What was his mother's name?

A. Leong Shee.

Q. Where is their home in China?

A. Chuck Sue Hong.

Q. What district? A. Heong Sarn District.

Q. Where is your home in China?

A. In the same place.

Q. Are you any relation of this boy?

A. Clansman.

(Testimony of Mok Yee Foon.)

Q. Are you any relation to him?

A. Only clansman.

Q. How do you know that he was born here?

A. I know he was born on Dupont street; I was here.

Q. How old was he the first time you saw him?

A. I saw him at the end of the month.

Q. Have you been to China in recent years?

A. In the 24th year of Quong Sue, I was home.

Q. When did you return to California?

A. In the 25th year.

Q. Did you see this boy, Mok Chung, in China?

A. Yes, sir.

Q. Did you see him at his and your village?

A. Yes, sir.

Q. How do you know the boy you saw in China was the boy that was born here?

A. My clansman told me about it.

Q. Who told you about it? A. My clansman.

Q. What was his name? A. Chue Kee was one.

The REFEREE.—Q. Is he any relation to the boy?

A. No, sir; just a clansman.

Mr. McGOWAN.—Q. Who else told you?

A. Nobody.

The REFEREE.—Q. Did any relative of the boy tell you he was born here? A. Only my clansman.

Mr. McGOWAN.—Q. When you were in China, did you see this boy's parents?

A. I saw his mother; I did not see his father.

Q. Why did you not see his father?

A. He had gone to the Spanish country.

(Testimony of Mok Yee Foon.)

Q. Was Mok Chung living with his mother there all the time? A. Yes, sir.

Q. How did you know it was his mother?

A. My clansman told me.

Q. Did you remember her from seeing her in California before? A. I recognized her.

Q. Do you know she had a boy born here?

A. Yes, sir.

Q. Was there any other boy living at that house at that time? A. Yes, sir.

Q. Any other boy?

A. I did not see him at home; I only saw him in the ancestral hall.

The REFEREE.—Q. You did not see him at his house? A. Yes, sir.

Q. Who of his relatives did you see while in China, if any?

A. I saw his aunt and the children of the aunt and the mother; just so many.

Q. Where did you see his mother; at what house?

A. I was in the house and saw her.

Q. Which house? A. In the mother's house.

Q. Who else was there when you saw the mother?

A. The aunt and the children were there.

Q. Was the boy there?

A. No, sir; the boy was not there; the children of the other woman were there.

Q. Where was the boy?

A. He was in the ancestral hall.

Q. At school? What was he doing there?

(Testimony of Mok Yee Foon.)

A. He was at school.

Q. How many times did you see the boy while you were in China? A. Many times.

Q. How many?

A. Tens of times; I don't remember.

Q. Where did you see him?

A. In the ancestral hall, but once in a while I would see him outside.

Q. You saw him mostly in the hall? A. Yes, sir.

Q. Going to school?

A. I would be passing by often, and I would see him through the door.

Q. How often did you see him in the hall; you yourself going in the hall? A. Ten or more times.

Q. In what building, if any, did you see him besides the ancestral hall? A. In town.

Q. In what town? A. The Do Moon market.

Q. Did you go with him to market? A. Yes, sir.

Q. How frequently did you go with him to market?

A. So many times that I cannot remember how many.

Q. Where would you meet him when you would go with him to market? A. From the ancestral hall

Q. Where would you meet him from the hall; would he come outside or would you go inside?

A. I would call him from the door outside.

Q. And he would come out? A. Yes, sir.

Q. Anybody else ever go with you to the market?

A. Sometimes we might meet two together, and sometimes there may be three or four of us.

Q. Who else? A. Yick Wing was one.

Q. Was he a student at the school, too?

(Testimony of Mok Yee Foon.)

A. No, sir; he was in China.

Q. Would you and Yick Wing go together to the hall, and then call him?

A. About more or less we would go there together.

Q. You and Yick Wing would go there and get him?

A. More or less.

Q. How frequently did Yick Wing go with you to the hall? A. Ten times or more.

Q. In what other building, if any, did you see the boy besides in the hall?

A. Only in the schoolhouse.

Q. How many houses are there in that village?

A. Twelve new houses, and over one hundred old ones.

Q. Are you married? A. I am married, yes.

Q. When did you get married?

A. In the 25th year.

Q. You were married on that trip to China?

A. Yes, sir.

Q. Was the boy at your wedding? A. Yes, sir.

Q. You saw him in the house then, didn't you?

A. Yes, sir, he came from school to my house at that time.

Q. Then you did see him in some other house besides the hall? A. He came to see the bride.

Q. Was he in your house? A. Yes, sir, twice.

Q. What other time was he at your house besides at the feast at the wedding?

A. Only twice; that he came to see the bride.

Q. Was he ever at your house more than the two times? A. Only two times.

(Testimony of Mok Yee Foon.)

Q. And both times to see the bride?

A. Yes, sir.

Q. Was it on the same day that he came down to see the bride?

A. No, sir, it was on different days.

Q. How long after your marriage did he come the second time?

A. The second day.

Q. Who were there on the second day?

A. A great many clansmen came there, just the same. There were a good many clansmen came the second day.

Q. How many tables were set in your house the first day?

A. The meal was eaten at the ancestral hall.

Q. The feast was at the hall and not at your house?

A. There were a few that ate in the house. There was not enough room in the house so they had to use the ancestral hall.

Q. You never saw the boy in any other building while you were in China except in the hall and on these two occasions when he came to see the bride at your house?

A. And at the market.

Q. At the market also? A. Yes, sir.

MOK CHUNG, the petitioner, sworn.

Mr. McGOWAN.—Q. Where were you born?

A. In California.

Q. What city? A. In San Francisco.

Q. What street and number?

A. 900, Dupont street.

Q. When were you born?

A. The 7th year of Quong Sue.

(Testimony of Mok Chung.)

Q. What month and day? A. I don't know.

Q. What was your father's name?

A. Mok Chuey Chu.

Q. What is your mother's name? A. Leong Shee.

Q. Where is your home in China?

A. Chuck Sue Hong.

Q. What district? A. Heong Sarn.

Q. Who have you seen in China from this country?

A. Yee Foon and Mok Yee You.

Q. Who else? A. I don't know.

Q. You mean Mok in front of their name?

A. Yes, sir.

Q. When did you see Mok Yee Foon?

A. When he went home in the 24th year.

Q. When did he return? A. In the 25th year.

Q. When did Mok Yee You go to China?

A. I was small at that time; I don't remember what year it was.

Q. About how many years ago was it?

A. Just at the age when I went to school.

Q. About how old were you when you first saw Mok Yee You? A. About thirteen or fourteen.

Q. Where did Mok Yee Foon live?

A. At my village.

Q. Where did Mok Yee You live?

A. In the same village.

Q. Did you see any one else in China from this country? A. No, sir; not that I know of.

Q. Where is your father now?

A. In the Spanish country.

Q. When did he go there? A. In the 20th year.

(Testimony of Mok Chung.)

Q. Was he in China before that?

A. He was home; he went from California back to China.

Q. Where is your mother now?

A. He went home at the same time with me.

Q. Where is your mother now, I asked you?

A. In China; in that village.

Q. Have you any brothers? A. No, sir.

Q. Any sisters? A. No, sir.

Q. Have you any uncles or aunts?

A. Yes, sir; I have an uncle in California.

Q. What is his name? A. Mok Yee You.

Q. Has he ever been back to China?

A. When I was a few years old.

Q. And not been back since? A. No, sir.

Q. Have you any other uncles in California besides that one?

A. No, sir. In the Spanish country there is a maternal uncle.

(The REFEREE.) Q. How long have you worn that character of garb that you now have on?

A. My uncle brought it down to the wharf.

Q. Why did he bring it to the wharf to you? What reason did he give for sending this sort of garb to you?

A. Because he saw that I was very cold, and that I had not clothes enough.

Q. Did you not have ordinary Chinese clothing?

A. I did not have enough.

Q. Did you have any companion on board the boat who wore similar clothes? Did you know Mok Yin aboard the boat?

(Testimony of Mok Chung.)

A. Yes, sir, Mok Yin came on the same boat with me.

Q. What sort of clothing did he wear—American clothes?

A. Yes, sir.

Q. Where did he get his American clothes from?

A. That I don't know.

Q. Did he wear American or Chinese clothes before he arrived here?

A. I don't remember.

Q. You came with him on the boat?

A. On the boat he wore Chinese clothing.

Q. Until he arrived here?

A. After he arrived, he commenced to wear them.

Q. Is he any relation of yours?

A. A clansman.

Q. Did you know him in China?

A. Yes, sir.

Q. Did he live in your village?

A. Yes, sir.

Q. I am going to ask you about Mok Yee Foon now. How frequently did you see him in China?

A. All along daily.

Q. Where did you see him?

A. In the ancestral hall and in the street.

Q. And anywhere else?

A. In the market.

Q. What market?

A. Do Moon.

Q. How frequently did you see him in the ancestral hall?

A. Several times; I don't remember how many. In the evening time after school hours we would sit in the ancestral hall.

Q. What do you mean by the "evening time"?

A. After meal time and when it would be dark.

Q. How do you mean, you and he would sit together? Was there school going on then?

A. I am speaking now of the holidays.

(Testimony of Mok Chung.)

Q. During the period when it was not holidays, where did you see him?

A. I saw him during that year in the ancestral hall.

Q. Was school in session?

A. He did not enter into the part where the school was being kept.

Q. What part of the building did you see him in?

A. There were other rooms there.

Q. And would you go in there and sit down with him, or what would happen?

A. In the evenings?

Q. Would you sit there and talk with him?

A. Yes, sir; in the evenings. I am speaking now of during the 25th year.

Q. Would there be any one else talking to you and he?

A. Oh, yes; people would come in there. It was a kind of a reception room for the clansmen.

Q. In the daytime, on other days than holidays—I am referring now to the time when the school was going on from day to day, did you see him in the hall?

A. I have seen him pass by the doorway when I have been in the school.

Q. Did he ever come into the schoolroom and sit down while the school was going on?

A. No, sir.

Q. At no time?

A. No, sir.

Q. When he would pass by the door when the school was in session that way, was there any conversation between you and him or any signs between you and him?

A. No, sir.

Q. You would only see him on such occasion as he

(Testimony of Mok Chung.)

would pass, and when he would pass out of sight you would not see any more of him? A. No, sir.

Q. Was that always the case when you would see him pass by the school-house? A. Yes, sir.

Q. Did you ever see him at your house?

A. No, sir.

Q. How frequently would you see him passing by the door of the schoolhouse?

A. I could not remember how many times.

Q. Often? A. Yes, sir.

Q. Which way would he be going? Would he be going towards the market, or in the opposite direction?

A. Both ways.

Q. Anybody with him usually?

A. Sometimes there would be others with him.

Q. How frequently did you go to the market with him? A. Many times.

Q. Did you go to the market with him at any other time than holidays?

A. When there was no school I used to go with him to market, and during the period that there was school I would go two or three times with him.

Q. When there was school, you went with him two or three times? A. Yes.

Q. Only?

A. At this time it would be during the period of time the school was in session, but not during the session of the school; that is, it would be noon-time, and my mother would want me to go and buy something, or so on.

(Testimony of Mok Chung.)

Q. Do I understand you that during the school season, you only went to market with him, and during the noon recess once when the school was not in session?

A. Except when there was let-out of school; when there was no let-out of school, I did not go.

Q. Where would you start from to go to the market with him at these times that school was let out?

A. He would come to the door of the ancestral hall and say, "I am going to the market; do you want to come along?"

Q. What would you be doing when there was no school?

A. After going home to meals, we would be around there.

Q. Do you mean that you would be outside of the hall or where, when he would come around?

A. On the outside.

Q. Did he ever call you out of the hall at any time to go to market with him?

A. No, sir, he never called me out.

Q. At no time? A. No, sir.

Q. I understand you that during the portion of the year when the school was held, he never called you out of the hall?

A. No, sir, never called me out during the 25th year.

MOK YEE FOON, recalled.

The REFEREE.—Q. How old are you?

A. Thirty.

Q. What day and month were you born?

A. The 4th year of Tung Gee, 9th month, 21st day.

(Testimony of Mok Yee Foon.)

Q. Where? A. In China.

Q. When you were here before, did I understand you correctly to say that when you would be passing along the hall—I will change that question: I want to ask you about seeing the boy on other times than during the holidays, or rather seeing him during the season of the year during the days of the week; when the school was going on and he attended school. I call your attention to that particular time. A. Very, well.

Q. During such period did you see the boy, and if so, where? A. Yes, sir, I saw him.

Q. Where? A. From the doorway.

Q. Whereabouts would he be?

A. He was studying.

Q. You saw him then in the schoolroom, studying, from the door? A. Yes, sir.

Q. How frequently? A. Many times.

Q. By "many times," do you mean frequently?

A. Yes, sir. I could not remember so many times.

Q. When you called him out as you would be passing by to go to the market with him, what was he doing at the time that you called him?

A. When I would go there to the door I would look in and I would see the boy, and I would call him, and if he had time he would come out, but if he did not have time he did not come, and this was at the time when he would be there studying.

Q. How frequently was that?

A. Several tens of times.

Q. From the schoolhouse, as I understand?

(Testimony of Mok Yee Foon.)

A. Yes, sir.

Q. While the school was in session?

A. Yes, sir.

MOK JIM, called for the petitioner, sworn.

Mr. McGOWAN.—Q. What is your business?

A. Gardener.

Q. When did you first come to California?

A. In the first year of Quong Sue.

Q. What did you do after that? A. Menlo Park.

Q. Who did you work for at Menlo Park?

A. Governor Stanford.

Q. How long did you work for Governor Stanford?

A. Over twenty-one years.

Q. You worked for him until he died?

A. Yes, sir.

Q. What did you do after that?

A. Mr. Stanford gave me permission to work for Mr. Will Crocker at Burlingame. Then I went back to Menlo. Mr. Tim Hopkins gave me the boarding-house there.

Q. Do you know the petitioner in this case?

A. Yes, sir.

Q. Where was he born?

A. He was born in San Francisco.

Q. What street?

A. Washington and Dupont street, 900.

Q. What was his father's name?

A. Mok Chuey Chu.

Q. Do you remember what his mother's name was?

A. Leong Shee.

(Testimony of Mok Jim.)

Q. How do you know that the boy was born here?

A. Mok Chuey Chu is my brother.

Q. How old was the boy the first time that you saw him?

A. I worked for Mr. Stanford at that time.

Q. Have you been to China?

A. Yes, sir; Quong Sue, 10th year, I went to China.

Q. When did you return? A. In the 12th year.

Q. Did you see this boy there?

A. Yes, sir; I saw the boy there. He was young then. Since I came back I don't know him.

Q. Have you seen this boy here? A. No, sir.

Q. I mean the boy that was in here and went out just now. A. Yes, sir; I saw him go out.

Q. Is this the same boy that you saw in China?

A. Yes, sir.

Q. How do you know? A. Yee Foon told me.

The REFEREE.—Q. That is the only way you know?

A. Yes, sir.

Mr. McGOWAN.—Q. Did you know he was coming here before he came?

A. I got letters stating that the boy was going to Mazatlan.

Mr. McGOWAN.—I should like to be sworn.

GEORGE A. McGOWAN, called for the petitioner, sworn.

The REFEREE.—Q. Where did Mok Chung come from?

(Testimony of George A. McGowan.)

A. He arrived on the steamer "San Jose," from Mazatlan.

The REFEREE.—I will reserve my decision in this matter.

2 o'clock P. M.

The REFEREE.—I recommend a remand of this case.

[Endorsed]: Filed April 9th, 1902. Geo. E. Morse, Clerk.

In the District Court of the United States, Northern District of California.

In the Matter of MOK CHUNG on }
Habeas Corpus. } No. 12,528.

Report of Referee Recommending Remand and Order Confirming Same.

E. H. HEACOCK, Special Referee and Examiner.

Pursuant to the order of the above-named court duly made and entered herein, referring the above-entitled matter to the undersigned, as special referee and examiner, to hear the testimony, ascertain, determine, and report to the Court, the facts, and his conclusions of law thereon, and to recommend such judgment as in his opinion ought to be entered therein, the said matter having been regularly brought on for hearing, and the same having been duly heard and submitted, and due consideration having been thereon had, I the said special referee and examiner, do find as follows:

That the above-named petitioner is a subject of the Empire of China.

That said petitioner has not, by sufficient, satisfactorily established his right to enter and remain in the United States, in accordance with the treaties and laws of the United States.

I do therefore report that, in my opinion, judgment should be entered herein:

That said petitioner was not at the date of the petition herein illegally restrained of his liberty, as therein alleged.

That said petitioner came to the United States from Mazatlan, Mexico, by the steamship "San Jose" on the 29th day of December, A. D. 1901.

And I do further report that, in my opinion, the said petitioner should be returned by the United States marshal for the Northern District of California, to the custody whence he was taken, to wit, on board the said steamship to the custody of the master thereof, for the purpose of deporting him out of the United States, and transporting him to the port whence he came; and that the said marshal should take the said petitioner into custody, and him safely keep till said order shall be fully executed.

No exceptions were taken to the above report by the petitioner or by the United States.

E. H. HEACOCK,
Special Referee and Examiner.

The above report of the special referee and examiner is confirmed, and judgment is ordered to be entered in accordance therewith.

January 20, 1902.

JOHN J. DE HAVEN,
District Judge.

[Endorsed]: Filed January 16, 1902. Geo. E. Morse, Clerk United States District Court, Northern District of California. By J. S. Manley, Deputy Clerk.

In the District Court of the United States, Northern District of California.

In the Matter of MOK CHUNG on }
 Habeas Corpus. } No. 12,528.

Order of Remand.

This matter having been regularly brought on for hearing upon the report of the special referee and examiner, it is by the Court now here ordered and adjudged:

That said report be, and the same is hereby confirmed, and it is adjudged and found that Mok Chung, the person in whose behalf the writ of habeas corpus herein was issued came from Mazatlan, Mexico, by the steamship "San Jose," and is a Chinese person forbidden by law to land within the United States, and has no right to be or remain therein.

It is therefore ordered that the said above-named person be remanded by the United States marshal for the Northern District of California, to the custody whence he was taken, to wit: On board the said steamship to the custody of the master thereof, whoever he may be at the time of the order of remand, or to place the said above-named person in the hands and charge of any party on board said steamship for the time being representing the master, or then in charge of said steamship in the absence of the master, or for the time exercising

control or authority thereon; this order to be executed as to said steamship, whether still in port not having departed therefrom, or having departed and returned since the proceedings herein were instituted. And in case said steamship has departed and not returned, or for any other reason the said above-named person cannot be placed on said steamship, that the said marshal place him upon any other vessel available for the purpose, for the purpose of deporting him out of the United States and transporting him to the port of Hong Kong. And for the purpose of carrying this order into effect, it is further ordered that the said marshal take the said named person into custody and him safely keep till said order shall be fully executed.

Entered this 20th day of January, 1902.

JOHN J. DE HAVEN,

Judge.

[Endorsed]: Filed January 20, 1902. Geo. E. Morse, Clerk. By J. S. Manley, Deputy Clerk.

In the District Court of the United States, in and for the Northern District of California.

In the Matter of MOK CHUNG on }
Habeas Corpus. } No. 12,528.

Notice of Appeal.

To the Clerk of the said Court and to the Honorable
MARSHALL B. WOODWORTH, Esq., United States
Attorney for the Northern District of California:

You and each of you will please take notice that the above-named Mok Chung, appellant, hereby appeals to

the United States Circuit Court of Appeals, for the Ninth Circuit, from the judgment and order of remand made and entered herein on the 21st day of January, A. D. 1902.

San Francisco, California, January 25th, A. D. 1902.

GEO. A. McGOWAN,

Attorney for Mok Chung, Petitioner and Appellant.

Service of the within notice and receipt of a copy thereof is hereby admitted this 25th day of January, A. D. 1902, at San Francisco.

MARSHALL B. WOODWORTH,

United States Attorney for Northern District of California.

[Endorsed]: Filed January 25, 1902. Geo. E. Morse, Clerk. By J. S. Manley, Deputy Clerk.

In the District Court of the United States, in and for the Northern District of California.

In the Matter of MOK CHUNG on }
Habeas Corpus. } No. 12,528.

Petition for Appeal.

Comes now Mok Chung, the petitioner and appellant herein, by his attorney, Geo. A. McGowan, Esq., and says:

That on the 20th day of January, A. D. 1902, the above-entitled Court made and entered judgment and order of remand herein, in which judgment and the proceedings had prior thereunto in the above-entitled cause, certain.

errors were committed to the prejudice of this appellant, all of which will appear more in detail from the assignment of errors which is filed herewith.

Wherefore, this applicant prays that an appeal may be granted in his behalf to the United States Circuit Court of Appeals for the Ninth Circuit, for the correction of the errors so complained of, and that a transcript of the record, proceedings and papers in the above-entitled action, duly authenticated, may be sent and transmitted to the said Circuit Court of Appeals for the Ninth Circuit.

GEO. A. MCGOWAN,
Attorney for Petitioner and Appellant.

[Style of Court—Number and Title of Case]

Assignment of Errors.

Comes now Mok Chung, petitioner and appellant herein, by his attorney, Geo. A. McGowan, Esq., in connection with his petition for an appeal herein and assigns the following errors which he avers occurred upon the trial of the above-entitled cause, and upon which he will rely upon appeal to the Circuit Court of Appeals for the Ninth Circuit, to wit:

1.

That the judgment made and entered in said matter is contrary to law.

2.

That the judgment made and entered in said matter is contrary to the evidence.

3.

That the judgment made and entered in said matter is not supported by the evidence.

Wherefore, the said Mok Chung prays that judgment and order of the said District Court, in and for the Northern District of California, made and entered herein in the office of the clerk of the said court on the 20th day of January, A. D. 1902, remanding said Mok Chung, be reversed, and that this cause may be remitted to the said District Court, with instructions to discharge the said Mok Chung from custody.

GEO. A. MCGOWAN,
Attorney for Petitioner and Appellant.

[Style of Court—Number and Title of Case.]

Order Allowing Petition for Appeal.

On this 8th day of April, A. D. 1902, came Mok Chung, the petitioner and appellant herein, by his attorney, Geo. A. McGowan, Esq., and filed herein and presented to this Court his petition, praying for the allowance of an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, intended to be urged and prosecuted by him, and praying also that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent and transmitted to the United States Circuit Court of Appeals for the Ninth Circuit, and that such other and further proceedings may be had in the premises as may seem proper.

On consideration whereof, the Court hereby allows the appeal prayed for, and orders execution and remand

stayed pending the hearing of the said case in the said United States Circuit Court of Appeals for the Ninth Circuit.

Done in open court, San Francisco, California, April 8th, A. D. 1902.

JOHN J. DE HAVEN,
District Judge.

Due service of the within papers is hereby admitted this 8th day of April, A. D. 1902, San Francisco, Cal.

BENJ. L. McKINLEY,
Assistant United States Attorney.

[Endorsed]: Filed April 8th, 1902. Geo. E. Morse, Clerk.

In the District Court, in and for the Northern District of California.

In the Matter of MOK CHUNG on }
Habeas Corpus. } No. 12,528.

Order Fixing Cost Bond.

It is hereby ordered that the cost bond on appeal in the above-entitled matter be, and the same is hereby fixed in the sum of one hundred dollars upon the giving of which by the appellant herein, the clerk will comply with the order allowing the appeal herein made on the 9th day of April, A. D. 1902.

Dated April 10th, 1902.

JOHN J. DE HAVEN,
District Judge.

[Endorsed]: Filed April 10, 1902. Geo. E. Morse, Clerk. By J. S. Manley, Deputy Clerk.

Bond on Appeal.

Know all men by these presents, that we, Mok Chung, as principal, and Geo. Byles and Wm. M. Josephi, as sureties, are held and firmly bound unto the United States of America in the full and just sum of one hundred (100) dollars, to be paid to the said United States of America, its certain attorneys, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 22d day of April, in the year of our Lord one thousand nine hundred and two.

Whereas, lately at a District Court of the United States, for the Northern District of California, in a matter depending in said court, in which said Mok Chung was the petitioner on habeas corpus, a judgment was rendered against the said Mok Chung, and the said Mok Chung having obtained from said Court an appeal to reverse the judgment in the aforesaid matter and a citation directed to Marshall B. Woodworth, United States attorney for the Northern District of California, citing and admonishing him to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, in the State of California, on the 10th day of May next.

Now, the condition of the above obligation is such, that if the said Mok Chung shall prosecute said appeal to effect, and answer all damages and costs, if he fails

to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signature in Chinese)

MOK CHUNG. [Seal]

GEO. BYLES. [Seal]

WM. M. JOSEPHI. [Seal]

Witness to signature of Mok Chung:

E. H. HEACOCK.

Acknowledged before me the day and the year first above written.

E. H. HEACOCK,

United States Commissioner, Northern District of California.

United States of America, }
Northern District of California. } ss.

Geo. Byles and Wm. M. Josephi, being duly sworn, each for himself, deposes and says: That he is a householder in said district, and is worth the sum of one hundred dollars, exclusive of property exempt from execution, and over and above all debts and liabilities.

GEO BYLES.

WM. M. JOSEPHI.

Subscribed and sworn to before me this 22d day of April, A. D. 1902.

E. H. HEACOCK,

United States Commissioner, Northern District of California.

Form of bond and sufficiency of securities approved.

JOHN J. DE HAVEN,

Judge.

BENJ. L. McKINLEY,

Assistant United States Attorney.

[Endorsed]: Filed April 22, 1902. Geo. E. Morse,
Clerk. By J. S. Manley, Deputy Clerk.

Clerk's Certificate to Transcript.

I, George E. Morse, clerk of the District Court of the United States for the Northern District of California, do hereby certify that the foregoing and hereunto annexed thirty-nine pages, numbered from 1 to 39, inclusive, contain a full, true and correct transcript of the record in said District Court in the Matter of Mok Chung on Habeas Corpus, No. 12,528.

I further certify that the cost of said record, amounting to \$21.30, has been paid by appellant.

Witness, my hand and the seal of said Court at San Francisco, this 29th day of April, A. D. 1902.

[Seal]

GEO. E. MORSE,

Clerk.

[Endorsed]: No. 830. In the United States Circuit Court of Appeals for the Ninth Circuit. Mok Chung, Appellant, vs. the United States, Appellee. Transcript of Record. Upon appeal from the United States District Court for the Northern District of California.

Filed April 30, 1902.

F. D. MONCKTON,

Clerk.